

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 w/CS

Relating to Actions Against Law Enforcement Officers

SPONSOR(S): Negron

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice (Sub)</u>	<u>6 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>13 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
3) <u>Local Government and Veteran's Affairs</u>	<u></u>	<u></u>	<u></u>
4) <u>Public Safety Appropriation (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, employing agencies of law enforcement officers who are sued or criminally prosecuted for actions arising from the performance of the officer's official duties have the option of paying for legal representations. The agency may pay for legal representation for the accused officer when either the plaintiff dismisses the suit or an officer is found not guilty of the offense.

HB 225 w/CS broadens the option of an agency to pay its officer's reasonable attorney's fees to include "costs" when in a civil or criminal action the plaintiff dismisses his/her suit against the officer, or the officer is found to be not liable or not guilty. This extension of the optional payment for representation in civil suits to include "costs" as well as attorney's fees is not a major change to current law since it remains the employing agency's option whether to pay the fees and costs at all. Section (2) of the bill mandates that an employing agency provide for reasonable legal representation and costs for any law enforcement officer "in any criminal action commenced against a law enforcement officer in any court provided that the officer's actions that gave rise to the charges" meets listed criteria and the charges "are dismissed" or the officer is "found not guilty." The agency will not have to pay if the actions of the officer constituted a material departure from the employing agency's written policies and procedures or generally recognized criminal justice standards.

HB 225 w/CS provides that if the agency is unable to provide legal representation for the law enforcement officer, the agency shall provide the officer with a list of attorneys from which the officer may select and which the agency agrees to retain, or by payment of reasonable attorney's fees. Payment of reasonable attorney's fees is accomplished under the bill by a particular process. Because of the mandatory language of the bill, it could entail increased state and local government spending. This may present mandates issues. Other issues may exist as to the drafting of the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0225b.ps.doc

DATE: April 15, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill mandates that state and local law enforcement agencies pay attorney fees for officers acquitted or whose criminal cases have been dismissed.

B. EFFECT OF PROPOSED CHANGES:

Currently, employing agencies of law enforcement officers who are sued or criminally prosecuted for actions arising from the performance of the officer's official duties have the option of paying for legal representations. The agency may pay for legal representation for the accused officer when either the plaintiff dismisses the suit or an officer is found not guilty of the offense.

HB 225 w/CS broadens the option of an agency to pay its officer's reasonable attorney's fees to include "costs" when in a civil or criminal action the plaintiff dismisses his/her suit against the officer, or the officer is found to be not liable or not guilty. This extension of the optional payment in civil cases to include "costs" as well as attorney's fees is not a major change to current law since it remains the employing agency's option whether to pay the fees and costs at all.

Section (2) of the bill mandates that an employing agency provide for reasonable legal representation and costs for any law enforcement officer "in any criminal action commenced against a law enforcement officer in any court provided that the officer's actions that gave rise to the charges" meets listed criteria and the charges "are dismissed" or the officer is "found not guilty." The agency will also not have to pay if the actions of the officer constituted a material departure from the employing agency's written policies and procedures or generally recognized criminal justice standards.

HB 225 w/CS provides that if the agency is unable to provide legal representation for the law enforcement officer, to comply with the law the agency must provide the officer with a list of attorneys or pay reasonable attorney's fees. Payment of reasonable attorney's fees is accomplished under the bill by the following process: 1) The law enforcement officer requesting payment of attorneys fees and costs would submit an application to the court having jurisdiction over the prosecution. The application would include an itemization statement from an attorney or expert witness appearing on behalf of the law enforcement officer, stating actual time expended and the rate of at which fees and expenses were computed. 2) The employing agency has the right to respond to the application for attorneys fees and costs, after which the court makes the determination as to reasonable attorney's fees and costs based on prevailing market rates and whether the officer's actions constituted a material departure from the employing agency's written policies and procedures. The bill also provides that no fee multiplier or lodestar provision may be used in any criminal defense.¹ Finally, HB 225 w/CS caps attorney's fees under this process at \$100,000.

¹ Black's Law Dictionary defines "Lodestar Rule" as: "In determining amount of statutorily authorized attorney's fees, "lodestar" is equal to number of hours reasonably expended multiplied by prevailing hourly rate in community for similar work and is then adjusted to reflect other factors such as contingent nature of suit and quality of representation."

C. SECTION DIRECTORY:

Section 1. Providing a popular name for the act as "Law Enforcement Fair Defense Act."

Section 2. Amends s. 111.065 relating to civil or criminal actions against law enforcement officers.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The bill would require state law enforcement agencies to pay an officer's legal representation in criminal case where the charges are dismissed or the officer is found not guilty. This will mandate increased spending by the agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

The bill would require local government agencies to pay an officer's legal representation in criminal case where the charges are dismissed or the officer is found not guilty. This will mandate increased spending by the agency.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Requiring agencies to pay attorneys fees and costs could result in a substantial financial obligation being imposed upon the agencies--an unfunded legislative mandate. According to the Florida Department of Law Enforcement, agencies cannot reasonably set aside funds for such contingencies since they are unpredictable, and the extent of fees and costs will vary. If the statute were to simply allow, not mandate, payments, each agency could determine whether it is in its best interest to do so.

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Department of Law Enforcement has concerns related to the provision of the bill which mandates that a law enforcement agency pay for legal representation for officers in criminal actions if the officer is found not guilty or the case is dismissed. The problem, from the Department's perspective, is that sometimes a criminal action may be dismissed because the state cannot meet its high burden of proof beyond a reasonable doubt, or the officer is found not guilty after trial, but there remains an agency action to discipline or fire the officer on the same conduct because the agency is proceeding in good faith to prove its case using the lower standard of proof for such actions. This could put the employing agency in the situation of paying the officer's attorney who is fighting the agency on the disciplinary action--even if the agency wins its case against the officer. If the officer is being decertified by the Criminal Justice Standards and Training Commission, the employing agency's payment of the officer's attorney in the criminal case will go far in paying for that same attorney's representation against the CJSTC in its actions. This represents a confusion of policy that ought not occur. From the Department's perspective, an agency's funds ought not be utilized to fund someone defending against the agency's actions.

It is unclear from the bill whether an officer who wished to hire and pay his own attorney would be prevented from doing so by the mandatory language of the bill, which provides that in a criminal case the law enforcement agency "shall" pay attorney's fees. For especially complex criminal cases, this issue may particularly effect the quality of an officer's defense in the light of the \$100,000 cap provided on attorney fees under that section. Also, if the agency is unable to pay for legal representation, the bill mandates that the agency either provide a list of attorneys which the law enforcement officer may choose, and which the agency agrees to retain. Given that the agency is not obligated to pay for representation unless and until the charges have been dismissed or the officer has been acquitted, it is unclear when the list would be presented to the officer to select an attorney, and whether the agency would still be obligated to pay if the officer was not acquitted or the case was not dismissed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 15, 2003, the Subcommittee on Criminal Justice approved a strike-all amendment that adopts the language of similar CS/ CS/ SB 478. The differences between the original house version and the senate bill are technical.

On April 15, 2003, the Committee for Public Safety & Crime Prevention adopted the strike-all amendment and approved the committee substitute. HB 225 w/CS and CS/ CS/ SB 478 are now identical.